**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPEALLATE SIDE JURISDICTION**

**APPEAL FROM ORDER NO. 326 OF 2000**

The Municipal Corporation of
Greater Mumbai,
A Corporate body duly
constituted under the BMC Act, 1888
having its main office at Mahapalika
Marg, Fort, Bombay 400 001. ..**Appellants**

Vs.

1.Shri Kanjibhai Thaver gada
Room No.11.

2.Shri Parvatbhai Akhai Gandhi
Room No.12.

3.Shri Ranchodbhai C. Patel
Room No.13.

4.Shri Dinesh N. Pandya ..**Respondents**
Room No.14.

All adult Indian Inhabitants of Bombay
Residing in their respective premises
on 2nd floor, Wahab Mansion, Irla Lane
Vile Parle (West), Bombay 400 057.

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Mr.N.V.Walawalkar, Adv. with Mr. J. Xavier Adv. for Appellants.

Mr. A.C. Singh Adv. i/b. Mr. D.R.Shah Adv. for Respondent Nos.1 to 3.

**CORAM: V.C.DAGA,J.**
**DATE: 30TH AUGUST, 2004.**

**JUDGMEMT**

1. This appeal is directed against the order dated 7th March, 2000 pressed in Notice of Motion No.3632 of 1999 in L.C.Suit No.1069 of 1998 by the Bombay City Civil Court at Bombay permitting the plaintiff, at their own cost, to reconstruct the suit premises as it existed on 28th July, 1999, after giving 48 hours notice to the Ward Officer of the Defendant Corporation with an undertaking to the

Court that they shall remove or demolish the reconstructed structure at the conclusion of the suit if so directed by the Trial Court.

. The Facts giving rise to the present appeal in nutshell are as under :-

2. That the original Plaintiffs/Respondents filed suit to challenge Notice dated 30th May, 1997 under Section 351 of Bombay Municipal Corporation Act (B.M.C. Act in short) together with an order passed by the Deputy Municipal Commissioner dated 12th February, 1998 directing demolition of the suit premises. Plaintiff also sought permanent injunction against the Appellants to restrain them from enforcing and/or executing the notice and order of demolition.

3. The Respondents took out Notice of Motion bearing No.977 of 1998 to seek an order of interim injunction to restrain the plaintiffs from demolishing the premises. Notice of motion was made absolute by the tiral Court in terms of prayer clause (a) vide its order dated 20th March, 1998.

4. The trial Court there after framed preliminary issue relating to the maintainability of the suit and kept the suit for recording evidence of the parties on the said preliminary issue. As the

Respondents and their Advocates remained absent and did not lead any evidence, the suit came to be dismissed on 17th December, 1998.

5. On the very same day i.e. 17th December, 1998 the Respondents took out notice of motion under Order 9 Rule 9 of C.P.C. bearing No.5587 of 1998 to seek restoration of the suit and revival of the interim order. The Appellants herein did not file any reply to the said Notice of motion. The matter came up for hearing before the trial Court on 26th September, 1999. The Advocate for Appellant Corporation sought time to file certain documents with the result Notice of Motion came to be adjourned to 28th July, 1999.

6. On 28th July, 1999 advocate appearing on behalf of the Appellant Corporation informed the trial Court that in view of dismissal of the suit, suit structure of the Respondents has been demolished, with the result, trial Court did not consider prayer for interim relief. The submission made by Corporation was disputed by the Respondents, as such the matter was adjourned to 2nd August, 1999 to enable parties to verify factual situation prevailing on the spot and to make statements in that behalf.

7. It is not in dispute that the statement made

by the Advocate for the Corporation that their suit structure has been demolished was a false and incorrect statement since the Appellants/Corporation itself issued notice under Section 488 of B.M.C.Act on 31st July, 1999 informing to the Respondents of the Appellant's intention of taking action of demolition pursuant to the notice. Admittedly, the suit structure was in existence on 28th and 31st July, 1999. The Appellants Corporation demolished the suit premises only on 28th August, 1999.

8. The trial Court after hearing the parties found that the false, incorrect and wrong statement was made by the Counsel appearing for the Appellant Corporation and that false statement has prevented Court from passing appropriate interim order. The trial Court also felt that it was taken for a ride by the Counsel appearing for the Corporation by making false statement. The trial Court also felt that by taking time on the basis of false statement; the said period was utilised to initiate action for demolition of suit structure. The trial Court was thus pleased to permit reconstruction of the suit premises as existed on 28th July, 1999 as indicated in the opening part of this order. Being aggrieved by this order appellant Corporation has invoked appellate jurisdiction of this Court.

Consideration

9. Rival Parties were heard. Perused appeal papers.

10. Having heard rival parties it is crystal clear that trial Court after hearing the parties and after appreciating their contentions came to the conclusion that Corporation was not entitled to demolish the structure during the period granted by it to verify correct factual position prevailing on the spot and to report it to the Court. The time was granted just to permit parties to verify the correctness of the statement made by the advocate appearing for the Corporation, which, ultimately, turned out to be incorrect rather false statement. Had incorrect statement not been made, the trial Court could have protected suit structure during pendancy of the Notice of Motion. It is thus clear that the Advocate for appellant-Corporation admittedly made false and misleading statement. In view of this factual admitted position, no fault can be found with the approach adopted by the trial Court in general and particularly with opening part of the operative part of the impugned order. On the basis of false, misleading statement or misrepresentation, if the Court was prevented from passing appropriate interim order and the Court was required to adjourn the suit for verification of the correctness of the statement, then the party taking

advantage from such false statement has to suffer. Viewed from this angle the permission granted by the trial Court to reconstruct suit structure as existed on 28th July, 1999 at the cost of the Plaintiff, cannot be faulted.

11. So far as the later part of the operative part of the order directing the plaintiffs to give undertaking to the trial Court that they shall remove or demolish the reconstructed structure at the conclusion of the suit as directed by the trial Court cannot be sustained in view of the fact that the Notice of motion for restoration of the suit is yet to be decided on its own merits. By the later part of the operative part of the impugned order the trial Court has presumed that the suit has been restored. The grievance made by the Counsel for the Appellant-Corporation to this extent is justified as such later part of the impugned order marked as 'A' for identification is set aside.

12. In the above premises, it is made clear that after disposal of this appeal the trial Court shall proceed to consider the Notice of motion moved under Order 9 Rule 9 of C.P.C. on its own merits. In the event, it decides to make the motion absolute and restores the suit, then it would be open for the parties to the suit to address the trial Court as to whether or not the interim order, which was

operating during the pendency of the suit has revived. If for any reason, trial Court holds that it does not get revived, then it would be open for the plaintiff to move appropriate Notice of motion for interim relief to seek appropriate orders from the trial Court as may be available in law. Till such time all these issues are decided, Corporation shall not proceed to take any action against the suit structure. It is made clear that the confirmation of the order of reconstruction of the suit premises shall not come in the way of the Corporation in the event Corporation decides to act upon its original notice directing demolition of the suit structure following due process of law. The order of trial Court or this order shall not provide legality to the suit structure unless it is decided on its own merits by the trial Court. Reconstruction shall be without prejudice to the legal rights of the appellant Corporation. By way of clarification it is made clear that reconstructed suit premises shall be considered as if it was existing before filing of the suit and shall be dealt with in accordance with law.

13. It is needless to mention that it would be open for the parties to file additional documents and/or counter affidavits and/or additional replies and/or rejoinder in support of their rival contentions.

14. In the result appeal stands allowed with no orders as to cost.

15. Parties are to appear before the trial Court on 10th September, 2004.

. Parties are permitted to act on the authenticated copy of this order.

**(V.C.DAGA,J.)**